

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE**, on March 16, 1999 at 10:30 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Don Hargrove, Vice Chairman (R)

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 585, HJ 12, HJ 31

EXECUTIVE ACTION ON HJ 31

{Tape : 1; Side : A; Approx. Time : 10:48 - 11:13}

SEN. TESTER was not present during the first part of executive action.

Motion: **SEN. WELLS** moved that **HJ 31 BE CONCURRED IN.**

Discussion:

SEN. WELLS said this resolution was brought forward because some people are frustrated because they are getting prerecorded voice

menu answering systems. I recognize that frustration and I have similar feelings at times, but I was not real clear as to what they are going to do about this. They are still going to have voice answering systems and they are still going to have people who are not going to be able to talk to a human being. I am skeptical this is going to improve much.

David Niss stated I think the reason **REP. MENAHAN** introduced this is because another bill of his ran into trouble. The bill would have required every state agency to provide a live body to answer the telephone. I am reasonably sure, because he and I had several discussions about this before the bill was heard, the problem was money and the agencies were going to respond to his bill with the question of either where is the money to hire another employee, or which current employee should we turn into a telephone receptionist? If we do that, where do we put the work that the employee was doing? That is how this came about. Because I drafted that bill, I had several conversations with the fellow from the Department of Administration who actually sets up the voice mail system and the routing for that system. He told me the Department of Administration used to have a policy similar to what **REP. MENAHAN** was requiring in that bill. He looked for it and couldn't find it. Apparently that policy does not exist anymore. Even though I did not draft this one, I think that is what **HJ 31** is doing. Line 5, Page 2, is about the gist of the bill.

SEN. WELLS stated I suppose it doesn't hurt to present the resolution in that sense, to encourage that the offer be made to talk to a real person. That is about as far we can go. It may be better than not doing anything.

Mr. Niss said my problem with the system is that it is not predictable past the second person whether or not there is going to be a live body there.

SEN. WELLS stated hopefully the agencies will find it in their budget to make an operator available, or start routing calls to someone who is currently an operator.

Mr. Niss said some agencies like the Secretary of State and Legislative Services have decided there are going to be no telephones answered by a recording. It is done on a case by case basis. The Department of Administration does it on what they call a by program basis; therefore, it is not agency or division. When I discussed this with the Department of Administration, that decision is made at the bureau level on a case by case basis. The Department of Administration does not see itself as a policing agency in spite of the fact they used to have a policy

on it. Currently, if a bureau asks for it, they give it to them.

Vote: Motion **carried 4-0.**

EXECUTIVE ACTION ON HB 632

Joe Kerwin, Deputy of Elections, Secretary of State, said I had said during the hearing, was that only active voters would be able to sign petitions because of the definition change of inactive voters. The bill changes inactive voter by striking the words "qualified elector" and puts in "individual". Looking at that, I had originally thought that meant a person only on the active list would be able to sign a petition. However, 13-27-102 is the statutory portion that talks about who may sign a petition and it says "qualified elector". Qualified elector is defined in the Constitution as "a citizen in the United States, 18 years of age or older, who meets the registration requirements provided by law is a qualified elector unless he is serving for a felony in penal institution or is of unsound mind as determined by a court". Additionally, these sections in the Constitution talk about petitions, initiatives, and Constitutional initiatives and say qualified electors may sign it.

Looking at this, I am not certain the bill restricts that to just active voters, but would still allow active and inactive voters to sign that. Secondly, I am not sure it would be allowable for the bill to clarify qualified elector statutorily when that definition is given in the Constitution. I don't think you can statutorily restrict qualified electors to active voters when the definition is given in Constitution to include inactive and active voters. I don't think that requires a change in the bill, but it does change what the bill does. It would still require that you need to reactivate 30 days before an election and the voter information pamphlet only has to be mailed to active voters. But I am not certain that only allowing active voters to sign a petition is correct.

SEN TESTER said there was some discussion that some counties have a 30 day reactivation deadline and some counties have a 1 day reactivation for elections other than federal elections. Can you tell me what kind of pinch it would be if we put everybody down on one day before the election? Would that be reasonable. **Mr. Kerwin** said our office thought it would be reasonable that one day would not be too much of a burden on the Clerk and Recorders. The Clerk and Recorders have a better feel for what goes on.

SEN. TESTER asked, do you have a list of the counties that have a 30 day deadline and the 1 day deadline? **Mr. Kerwin** replied, no we don't. **SEN. TESTER** asked, the one day provision for federal elections is what they have to live by, correct? **Mr. Kerwin** said, for federal elections it is the same day. A person can walk into the polls and reactivate. **SEN. TESTER** asked, can they handle that? Has there been a lot of complaining about that? **Mr. Kerwin** replied they can handle that. It is something they are required to do under federal law. **SEN. TESTER** asked, what kind of elections are we talking about? **Mr. Kerwin** explained it is school board elections, municipal elections, special district elections, special county elections if they are not held in conjunction with a federal election. Any election except the June and November even year elections.

SEN. TESTER asked, who testified for and against this bill? **SEN. WELLS** replied **Mike Fellows** of the **Montana Libertarian Party**, **Sue Haverfield**, the **Election Administrator** of **Flathead County**, and **Duane Winslow**, the **Election Administrator** of **Yellowstone County**, were the three proponents for this bill. The opponents were **Joe Kerwin**, the **Deputy of Elections** for the **Secretary of State**, **Craig Sweet**, the **Legislative Director** of the **Montana Public Interest Research Group (MontPIRG)**, and **Debbie Smith** of **Montana Common Cause**.

SEN. TESTER said I don't want to put anyone in a bind, but it doesn't seem to me that it should.

A brief discussion was held as to whether the voter information pamphlet would cause problems. The statewide election is the only election voter information pamphlets are distributed, and every statewide election is held during a federal election.

Mr. Kerwin said the exception would be if you had a special election.

SEN. TESTER asked, if this bill failed, what would the law be?

Mr. Kerwin said it would be a situation like we have now, where it is not real clear.

Mr. Niss said because of that, half the counties would have the 30 day requirement, and half of them do not.

Mr. Kerwin explained so far we haven't had a problem, but it could cause a problem if we had a close local election.

SEN. WELLS said I haven't talked to my county clerk and recorder. I would like to do that to see if there is a true burden that would be imposed.

SEN. COLE said I will hold off and we will try to take action tomorrow.

DISCUSSION ON HB 182

{Tape : 1; Side : A; Approx. Time : 11:13 - 11:27}

Mary Bryson, Department of Revenue, said these are very similar to the amendments we proposed, with the exception of Number 3 and Number 6. **David Niss** passed out an unedited version in a previous meeting. Number 3 would put the retirement system into the business of establishing its own unclaimed property in which an individual who had unclaimed property with the retirement system, under Subsection 3, would forfeit their rights to that property. That is an exact contradiction to what the Unclaimed Property Act is all about. The Unclaimed Property Act allows you to claim that property in perpetuity. If you have retirement system money that has laid unclaimed for five years, you forfeit your right to it. That is the issue we have with that. That is similar to what is occurring with Amendment 6. We have a memorandum of understanding that we are negotiating with the Retirement System which would basically allow them to retain the money in the system, and they would provide us with the list of the individuals who they believe have unclaimed property. Then we would pursue identifying those individuals.

A brief discussion was held concerning the amendments. The Department of Revenue has a problem with all of Number 3 and all of Number 6. The board they are referring to here is the Retirement Board. They may enter into agreements today under current statute. You do not need to provide additional statute authority in order to do that. Number 4 is what the Department of Revenue would cover administratively in the agreement with the retirement system. The Department of Revenue is allowing them to retain those monies under an agreement that they would enter into agreement with them.

Ms. Bryson said she would prefer not to see Number 4 in statute and that is the distinction I am making in this.

SEN. TESTER asked, down the road if the two departments have new directors who don't get along, can they pull the money out of there? **Ms. Bryson** explained that is not something we have done because there is a lot of difficulty in determining what the

actual amount is, because it is an actuarial determination. For all intent and purpose, any new director with the Department of Revenue would be put in a difficult situation because this is an area where many states that have looked at unclaimed property in the retirement systems have struggled. We think this works best for both parties. **SEN. TESTER** asked, that being said, why wouldn't you want it in the statute? **Ms. Bryson** replied, it lends to the belief that it is not unclaimed property under the Unclaimed Property Statute and is treated differently.

SEN. COLE said, out of fairness we will work out something where both parties can be here. I would hope that the two of you would do your best to work this out, but it doesn't seem like we are getting very close to getting anything resolved.

SEN. TESTER asked, do you have a problem with Number 6 in its entirety or just the underlined portions? **Ms. Bryson** said, it is Subsection 2 and Subsection 3 of those new statements on Page 2, the underlined portions.

SEN. WELLS stated **Ms. Bryson** has indicated these retirement benefits fall within the Unclaimed Property Act.

Mr. Niss said I think they do. That is in Section 96. The language says "except an account or plan established by Title 19". That is the amendment which takes retirement systems out of the Unclaimed Property Act. Therefore, that is why the Department of Revenue wants to see this section stricken from the bill. If the section does not come out and it is not amended, then the question arises, do we use current law. Current law at the beginning of this section says on the bottom of Page 61, "except as provided in Subsection 6, property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property". Starting on 1a on Line 26 of Page 61, there is the beginning of the list of property that is covered by the Uniform Unclaimed Property Act. That whole list of subdivisions on Page 62 have the same status in specifying the number of years for each one. It now says, "property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral". Current law now lists it and it has one of the reverting types of property.

EXECUTIVE ACTION ON HJ 12

SEN. COLE said there was a bill which would have established seven tribal members and seven non-tribal members. I understand that bill went down.

{Tape : 1; Side : B; Approx. Time : 11:27 - 11:47}

As I understand, they are trying to set up a commission rather than a coordinator.

SEN. TESTER asked, do you think it would be appropriate to strike, "another interim committee"?

SEN. COLE replied, I don't see any problem leaving it in there in case there is a problem with having the committee on Indian Affairs. Under **SB 11**, all of these are going into the Judiciary interim committee.

Motion: **SEN. TESTER** moved that **HJ 12 BE CONCURRED IN.**

Discussion:

SEN. TESTER said, I will support **Wyman McDonald, Office of Indian Affairs, Governor's Office**, in this effort.

SEN. WELLS stated I question what will be accomplished by this. What additional authority or accomplishment can be achieved by a state commission that the Coordinator of Indian Affairs doesn't do? If you can't get things done. Does the commission have more authority? Are we going to spend more money to fund their efforts and then they step forward and push for more things? There have been a number of different legislative bills on Indian subjects. I am wondering just how many approaches to this we need to take. It is not because I want to suppress the Indian effort to achieve equality, but at the same time I think we already have programs. I question why they are not achieving what they should.

Mr. Niss said the only part of your question I can answer is what the Office of Indian Affairs has the authority to do by current statute. The reason is because the purpose of the study would be to decide whether we need a commission and if we do, what its authority should be. Currently, there is nothing to compare the current statutes for the current office to. It's hard to say whether they would have more or less authority, because the comparison will not be completed and the decisions won't be made until the study is accomplished. The only thing you could say now about that office, which is one individual, and the commission is that the commission would be more inclusive of other ideas and other tribes.

SEN. TESTER stated, I hesitate to speak on this because I don't know enough about the Indian culture to claim knowledge, but it is my understanding that many of these tribes were enemies before we came and some of that is still around. I think that by having

one person, the perception would be that you are leaving somebody out.

SEN. COLE said there was a frustration with the last two or three commissioners who would work with the tribes through the Bureau of Indian Affairs, but they really didn't have much power. They would be the intermediary between the tribes and the state agencies.

Mr. Niss read from the statute, "it shall be the duty of the State Coordinator of Indian Affairs to carry out the legislative policies set forth in the previous section. He shall account with the problems confronting the Indians of Montana and he shall advise the legislature and executive branches of the State of Montana of those problems and shall make recommendations for the alleviation thereof. He shall also serve the Montana Delegation and the Federal Congress as an advisor and intermediary in the field of Indian Affairs and shall act as spokesman for representative Indian organizations and groups, public and private, whenever his support is solicited. All executive and legislative agencies of state government may, within the area of their expertise and authority, provide assistance to tribal councils or their official designees requesting such assistance on any matter relating to coal development on Indian reservations lands and may make an appropriate charge, therefore".

SEN. WELLS said this would let everyone, including the state legislature, weigh out the pros and cons of whether a commission was useful and appropriate. In that sense the study would probably be a valuable thing to accomplish.

Vote: Motion **carried 4-0.**

EXECUTIVE ACTION ON HB 585

Motion/Vote: **SEN. WELLS** moved that **HB 585 BE CONCURRED IN.**
Motion carried 4-0.

ADJOURNMENT

Adjournment: 11:47 A.M.

SEN. MACK COLE, Chairman

KERI BURKHARDT, Secretary

MC/KB

EXHIBIT (sts59aad)